

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

Case No. 14-CV-00203 (VEB)

JOHN WESLEY GARDIPEE,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

**I. INTRODUCTION**

In December of 2010, Plaintiff John Wesley Gardipee applied for supplemental security income (“SSI”) benefits. The Commissioner of Social Security denied the application.

1 Plaintiff, represented by Lora Lee Stover, Esq., commenced this action  
2 seeking judicial review of the Commissioner's denial of benefits pursuant to 42  
3 U.S.C. §§ 405 (g) and 1383 (c)(3). The parties consented to the jurisdiction of a  
4 United States Magistrate Judge. (Docket No. 6).

5 On March 30, 2015, the Honorable Rosanna Malouf Peterson, Chief United  
6 States District Judge, referred this case to the undersigned pursuant to 28 U.S.C. §  
7 636(b)(1)(A) and (B). (Docket No. 15).

## 8 9 **II. BACKGROUND**

10 The procedural history may be summarized as follows:

11 Plaintiff applied for SSI benefits on December 8, 2010. (T at 207).<sup>1</sup> The  
12 application was denied initially and on reconsideration. Plaintiff requested a hearing  
13 before an Administrative Law Judge ("ALJ"). On September 14, 2012, a hearing  
14 was held before ALJ Gene Duncan. (T at 39). Plaintiff appeared with his attorney  
15 and testified. (T at 43-48, 57-74). The ALJ also received testimony from Trevor  
16 Duncan, a vocational expert (T at 78-86), and Dr. Arthur Lewy, a psychological  
17 expert. (T at 49-57).

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<sup>1</sup> Citations to ("T") refer to the administrative record at Docket No. 10.

1 On October 9, 2012, ALJ Duncan issued a written decision denying the  
2 application for benefits and finding that Plaintiff was not disabled within the  
3 meaning of the Social Security Act. (T at 21-38). The ALJ's decision became the  
4 Commissioner's final decision on May 19, 2014, when the Appeals Council denied  
5 Plaintiff's request for review. (T at 1-6).

6 On June 19, 2014, Plaintiff, acting by and through his counsel, timely  
7 commenced this action by filing a Complaint in the United States District Court for  
8 the Eastern District of Washington. (Docket No. 4). The Commissioner interposed  
9 an Answer on October 14, 2014. (Docket No. 9).

10 Plaintiff filed a motion for summary judgment on February 9, 2015. (Docket  
11 No. 13). The Commissioner moved for summary judgment on March 23, 2015.  
12 (Docket No. 14).

13 For the reasons set forth below, the Commissioner's motion is granted,  
14 Plaintiff's motion is denied, and this case is closed.

### III. DISCUSSION

#### A. Sequential Evaluation Process

The Social Security Act (“the Act”) defines disability as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a plaintiff shall be determined to be under a disability only if any impairments are of such severity that a plaintiff is not only unable to do previous work but cannot, considering plaintiff’s age, education and work experiences, engage in any other substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person is engaged in substantial gainful activities. If so, benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the decision maker proceeds to step two, which determines whether plaintiff has a medically severe impairment or combination of impairments. 20 C.F.R. §§

1 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

2 If plaintiff does not have a severe impairment or combination of impairments,  
3 the disability claim is denied. If the impairment is severe, the evaluation proceeds to  
4 the third step, which compares plaintiff's impairment with a number of listed  
5 impairments acknowledged by the Commissioner to be so severe as to preclude  
6 substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20  
7 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed  
8 impairments, plaintiff is conclusively presumed to be disabled. If the impairment is  
9 not one conclusively presumed to be disabling, the evaluation proceeds to the fourth  
10 step, which determines whether the impairment prevents plaintiff from performing  
11 work which was performed in the past. If a plaintiff is able to perform previous work  
12 that plaintiff is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv),  
13 416.920(a)(4)(iv). At this step, plaintiff's residual functional capacity (RFC) is  
14 considered. If plaintiff cannot perform past relevant work, the fifth and final step in  
15 the process determines whether plaintiff is able to perform other work in the national  
16 economy in view of plaintiff's residual functional capacity, age, education and past  
17 work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v.*  
18 *Yuckert*, 482 U.S. 137 (1987).

1 The initial burden of proof rests upon plaintiff to establish a *prima facie* case  
2 of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir.  
3 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
4 met once plaintiff establishes that a mental or physical impairment prevents the  
5 performance of previous work. The burden then shifts, at step five, to the  
6 Commissioner to show that (1) plaintiff can perform other substantial gainful  
7 activity and (2) a “significant number of jobs exist in the national economy” that  
8 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

9 **B. Standard of Review**

10 Congress has provided a limited scope of judicial review of a Commissioner’s  
11 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
12 made through an ALJ, when the determination is not based on legal error and is  
13 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
14 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999). “The [Commissioner’s]  
15 determination that a plaintiff is not disabled will be upheld if the findings of fact are  
16 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir.  
17 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla,  
18 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9<sup>th</sup> Cir. 1975), but less than a  
19 preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9<sup>th</sup> Cir. 1989).

1 Substantial evidence “means such evidence as a reasonable mind might accept as  
2 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401  
3 (1971)(citations omitted). “[S]uch inferences and conclusions as the [Commissioner]  
4 may reasonably draw from the evidence” will also be upheld. *Mark v. Celebreeze*,  
5 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review, the Court considers the record as a  
6 whole, not just the evidence supporting the decision of the Commissioner. *Weetman*  
7 *v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525,  
8 526 (9<sup>th</sup> Cir. 1980)).

9 It is the role of the Commissioner, not this Court, to resolve conflicts in  
10 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
11 interpretation, the Court may not substitute its judgment for that of the  
12 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
13 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
14 set aside if the proper legal standards were not applied in weighing the evidence and  
15 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
16 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
17 administrative findings, or if there is conflicting evidence that will support a finding  
18 of either disability or nondisability, the finding of the Commissioner is conclusive.  
19 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

1 **C. Commissioner's Decision**

2 The ALJ found that Plaintiff had not engaged in substantial gainful activity  
3 since December 8, 2010, the application date. (T at 26). The ALJ determined that  
4 Plaintiff had the following severe impairments: learning disorder, stuttering, and  
5 cervical strain with low back pain.<sup>2</sup> (T at 26).

6 However, the ALJ concluded that Plaintiff did not have an impairment or  
7 combination of impairments that met or medically equaled one of the impairments  
8 set forth in the Listings. (T at 27).

9 The ALJ found Plaintiff had the residual functional capacity ("RFC") to  
10 perform light work, as defined in 20 CFR § 416.967 (b), with the following  
11 restrictions: he cannot frequently turn his head or perform conveyor belt work; he  
12 needs to avoid concentrated exposure to dust, odors, fumes, and gases; he can  
13 perform simple, routine, and familiar tasks with superficial public contact,  
14 occasional conversations with supervisors, but no high-stress work or high-stress  
15 oral communication; he can work independently, but not in coordination with others  
16 and should avoid intense interaction with others; he needs a tolerant supervisor  
17 willing to provide hands-on training as necessary; he cannot be given responsibility

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18 <sup>2</sup> The ALJ identified these impairments in the bolded "heading" of his decision with respect to the  
19 step two analysis. As discussed below, the ALJ's narrative discussion indicates that he also  
20 recognized Plaintiff's mental disorder and anxiety disorder as severe impairments.



1 for the safety of others and would be expected to off-task five percent of the  
2 workday (in small one to three minute increments); he should not be required to  
3 make executive decisions or be required to engage in extended reading for content  
4 and comprehension. (T at 29).

5 Plaintiff had no past relevant work. (T at 33). Considering Plaintiff's age (20  
6 years old on the application date), education (high school), work experience, and  
7 RFC, the ALJ determined that there were jobs that exist in significant numbers in the  
8 national economy that Plaintiff can perform. (T at 33-34).

9 As such, the ALJ concluded that Plaintiff had not been disabled under the Act  
10 from December 8, 2010 (the application date) through October 9, 2012 (the date of  
11 the ALJ's decision) and was therefore not entitled to benefits. (Tr. 34). As noted  
12 above, the ALJ's decision became the Commissioner's final decision when the  
13 Appeals Council denied Plaintiff's request for review. (Tr. 1-6).

#### 14 **D. Plaintiff's Arguments**

15 Plaintiff contends that the Commissioner's decision should be reversed. He  
16 offers three (3) principal arguments in support of his position. First, he contends that  
17 the ALJ's step two analysis was flawed. Second, he challenges the ALJ's credibility  
18 determination. Third, Plaintiff argues that the hypothetical posed to the vocational  
19 expert was inadequate. This Court will address each argument in turn.

1           **1.           Step Two Severity Analysis**

2           At step two of the sequential evaluation process, the ALJ must determine  
3 whether the claimant has a “severe” impairment. See 20 C.F.R. §§ 404.1520(c),  
4 416.920(c). The fact that a claimant has been diagnosed with and treated for a  
5 medically determinable impairment does not necessarily mean the impairment is  
6 “severe,” as defined by the Social Security Regulations. *See, e.g., Fair v. Bowen*,  
7 885 F.2d 597, 603 (9th Cir. 1989); *Key v. Heckler*, 754 F.2d 1545, 1549-50 (9th Cir.  
8 1985). To establish severity, the evidence must show the diagnosed impairment  
9 significantly limits a claimant's physical or mental ability to do basic work activities  
10 for at least 12 consecutive months. 20 C.F.R. § 416.920(c).

11           The claimant bears the burden of proof at this stage and the “severity  
12 requirement cannot be satisfied when medical evidence shows that the person has  
13 the ability to perform basic work activities, as required in most jobs.” SSR 85-28.  
14 Basic work activities include: “walking, standing, sitting, lifting, pushing, pulling,  
15 reaching, carrying, or handling; seeing, hearing, speaking; understanding, carrying  
16 out and remembering simple instructions; responding appropriately to supervision,  
17 coworkers, and usual work situation.” *Id.*

18           In the bolded heading related to step two of his decision, the ALJ identified  
19 the following severe impairments: learning disorder, stuttering, and cervical strain  
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1 with low back pain. (T at 26). Plaintiff contends that the ALJ erred and should have  
2 found that his organic mental disorder/anxiety disorder, asthma, and obesity were  
3 severe impairments.

4 With regard to Plaintiff's mental/anxiety disorder, Plaintiff is correct that the  
5 ALJ did not include that disorder in the list of severe impairments set forth in bold in  
6 his decision. (T at 26). However, the ALJ referenced the testimony of Dr. Arthur  
7 Lewy, a mental expert, who testified at the administrative hearing and opined that  
8 Plaintiff had "organic mental disorder . . . not otherwise specified and anxiety  
9 disorder not otherwise specified." (T at 26, 50). The ALJ noted that Dr. Lewy's  
10 testimony was consistent with the evidence of record and concluded that "these  
11 impairments more than minimally affect [Plaintiff's] ability to perform basic work  
12 activities" and, as such, were "severe." (T at 26). The ALJ assigned "significant  
13 weight" to Dr. Lewy's opinion. (T at 32).

14 In addition, the ALJ incorporated limitations regarding Plaintiff's ability to  
15 perform the mental demands of basic work activity into his RFC determination. For  
16 example, the ALJ found that Plaintiff is limited to simple, routine, and familiar tasks  
17 with superficial public contact, occasional conversations with supervisors, but no  
18 high-stress work or high-stress oral communication; he can work independently, but  
19 not in coordination with others and should avoid intense interaction with others; he

1 needs a tolerant supervisor willing to provide hands-on training as necessary; he  
2 cannot be given responsibility for the safety of others and would be expected to off-  
3 task five percent of the workday (in small one to three minute increments); he should  
4 not be required to make executive decisions or be required to engage in extended  
5 reading for content and comprehension. (T at 29).

6 Although the mental disorder and anxiety disorder should have been included  
7 in the ALJ's bolded list of severe impairments, it is clear beyond doubt that the ALJ  
8 accepted Dr. Lewy's opinion regarding these conditions, that the ALJ considered the  
9 conditions severe, and that the ALJ incorporated the limitations arising from those  
10 conditions into the RFC determination. Plaintiff has not articulated any prejudice  
11 arising from the fact that these conditions were not included in the bolded list of  
12 impairments, apparently as a result of a clerical error.

13 With regard to asthma, the ALJ recognized that Plaintiff had been diagnosed  
14 with the condition, but noted that no treating or examining provider assessed any  
15 limitations arising from the condition. (T at 26-27). Indeed, the evidence suggested  
16 that Plaintiff's asthma was controlled with medication. (T at 470). In any event, the  
17 ALJ's RFC determination included a limitation that Plaintiff must avoid  
18 concentrated exposure to dust, odors, fumes, and gases. (T at 29). Plaintiff has not  
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1 pointed to any evidence contradicting the ALJ's conclusion or establishing any  
2 prejudice arising from the finding that his asthma was not a severe impairment.

3 Concerning obesity, Plaintiff testified that he was five feet, six inches tall and  
4 weighed 235 pounds. (T at 44-45). The ALJ recognized this condition, but noted  
5 that no medical evidence demonstrated any functional limitations associated with  
6 Plaintiff's obesity. (T at 26). Plaintiff points to his obesity as exacerbating his  
7 physical impairments, but does not identify any limitations arising from obesity in  
8 particular or articulate any prejudice arising from the ALJ's conclusion that obesity  
9 was not a severe impairment.

10 In sum, this Court finds no error with regard to the ALJ's step two analysis.  
11 The step two analysis was resolved in Plaintiff's favor, *i.e.* the ALJ concluded that  
12 Plaintiff had severe impairments and proceeded with the sequential analysis. *See*  
13 *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005). It is clear the ALJ carefully  
14 considered Plaintiff's mental impairments and included significant limitations in his  
15 RFC determination. Moreover, even assuming *arguendo* that the ALJ erred in  
16 finding that Plaintiff's obesity and asthma were non-severe, any error in that regard  
17 was harmless because the ALJ considered these conditions when determining  
18 Plaintiff's RFC. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007).

## 2. Credibility

A claimant's subjective complaints concerning his or her limitations are an important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9<sup>th</sup> Cir. 2004)(citation omitted). The ALJ's findings with regard to the claimant's credibility must be supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). "General findings are insufficient: rather the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

However, subjective symptomatology by itself cannot be the basis for a finding of disability. A claimant must present medical evidence or findings that the existence of an underlying condition could reasonably be expected to produce the symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R. § 404.1529(b), 416.929; SSR 96-7p.

In this case, Plaintiff testified as follows: He lives in a home with three other people and earns a small amount of money by helping his grandmother clean her yard. (T at 43). He has difficulty staying focused and has difficulty concentrating

1 when reading. (T at 44). He has occasional anxiety attacks (about once a month,  
2 lasting for 15-20 minutes), but tries his best to cope with them. (T at 48). Back and  
3 neck pain flare-ups occasionally make movement difficult. (T at 58-59). His ability  
4 to move his neck from side-to-side is very limited. (T at 59). He can stand for 30  
5 minutes before needing to sit down. (T at 59-60). He can sit for an hour, and walk  
6 for a mile and a half. (T at 59-60). Lifting 25-40 pounds causes back pain. (T at 61).  
7 He does the dishes, cooks, does, laundry and light cleaning. (T at 62). He goes out  
8 with a few friends to karaoke once or twice a week. (T at 63). He often needs to  
9 withdraw from social situations because of anxiety. (T at 67). He can perform a task  
10 for 20-25 minutes before needing a break. (T at 68).

11 The ALJ found that Plaintiff's medically determinable impairments could  
12 reasonably be expected to cause some of the alleged symptoms, but that his  
13 testimony concerning the intensity, persistence, and limiting effects of those  
14 symptoms were not credible to the extent alleged. (T at 30).

15 This Court finds the ALJ's assessment supported by substantial evidence.  
16 Treatment notes were not consistent with claims of debilitating back and neck pain,  
17 generally indicating a full range of motion, full muscle strength, and limited clinical  
18 findings. (T at 477, 495, 496, 497, 513). Dr. Ken Young performed a consultative  
19 examination in May of 2011. Dr. Young assessed low back pain "mainly subjective  
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1 in nature, without any clinical objective findings.” (T at 493). He noted that Plaintiff  
2 had some “mild stuttering behavior, but [was] certainly understandable.” (T at 493).  
3 Dr. Young did not find any limitations in Plaintiff’s functioning. (T at 493).

4 Dr. Lewy reviewed the record and testified at the administrative hearing that  
5 Plaintiff could perform the mental demands of basic work activities, subject to  
6 limitations consistent with those included in the ALJ’s RFC determination. (T at 49-  
7 57).

8 Dr. John Arnold, a clinical psychologist, performed a consultative  
9 examination in June of 2011. Dr. Arnold assigned a Global Assessment of  
10 Functioning (“GAF”) score<sup>3</sup> of 65 (T at 483), which is indicative of mild symptoms.  
11 *See Wright v. Astrue*, CV-09-164, 2010 U.S. Dist. LEXIS 53737, at \*27 n. 7 (E.D.  
12 Wa. June 2, 2010). He described Plaintiff’s prognosis as “Fair to Good.” (T at 483).

13 Dr. James Bailey, a non-examining State Agency review consultant, assessed  
14 mild limitations in activities of daily living, moderate limitations in social  
15 functioning, and moderate limitations with regard to concentration, persistent, or  
16 pace. (T at 95).

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<sup>3</sup> “A GAF score is a rough estimate of an individual's psychological, social, and occupational  
20 functioning used to reflect the individual's need for treatment.” *Vargas v. Lambert*, 159 F.3d 1161,  
1164 n.2 (9th Cir. 1998).



1 Dr. Norman Staley, a non-examining State Agency review consultant, opined  
2 that Plaintiff could occasionally lift/carry 50 pounds, frequently lift/carry 25 pounds,  
3 stand/walk for about 6 hours in an 8-hour workday, and sit for about 6 hours in an 8-  
4 hour workday. (T at 108).

5 Where, as here, substantial evidence supports the ALJ's credibility  
6 determination, this Court may not overrule the Commissioner's interpretation even if  
7 "the evidence is susceptible to more than one rational interpretation." *Magallanes*,  
8 881 F.2d 747, 750 (9th Cir. 1989); *see also Morgan v. Commissioner*, 169 F.3d 595,  
9 599 (9<sup>th</sup> Cir. 1999)("[Q]uestions of credibility and resolutions of conflicts in the  
10 testimony are functions solely of the [Commissioner].").

### 11 **3. Step Five Analysis**

12 At step five of the sequential evaluation, the burden is on the Commissioner to  
13 show that (1) the claimant can perform other substantial gainful activity and (2) a  
14 "significant number of jobs exist in the national economy" which the claimant can  
15 perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). If a claimant cannot  
16 return to his previous job, the Commissioner must identify specific jobs existing in  
17 substantial numbers in the national economy that the claimant can perform. See  
18 *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir.1995). The Commissioner may  
19 carry this burden by "eliciting the testimony of a vocational expert in response to a  
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1 hypothetical that sets out all the limitations and restrictions of the claimant.”  
2 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995). The ALJ's depiction of the  
3 claimant's disability must be accurate, detailed, and supported by the medical record.  
4 *Gamer v. Secretary of Health and Human Servs.*, 815 F.2d 1275, 1279 (9th  
5 Cir.1987). “If the assumptions in the hypothetical are not supported by the record,  
6 the opinion of the vocational expert that claimant has a residual working capacity  
7 has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9<sup>th</sup> Cir. 1984).

8 Here, the ALJ’s step five analysis was based on testimony provided by Trevor  
9 Duncan, a vocational expert. (T at 75-87). The ALJ noted that, per VE Duncan, a  
10 hypothetical claimant with Plaintiff’s age, education, work experience, and RFC  
11 could perform the duties of mail clerk and delivery driver, both of which exist in  
12 significant numbers in the national economy. (T at 34). Plaintiff argues that the ALJ  
13 erred by failing to include all of his limitations in the hypotheticals presented to the  
14 VE.

15 However, an ALJ is not obliged to accept as true limitations alleged by  
16 Plaintiff and may decline to include such limitations in the vocational expert’s  
17 hypothetical if they are not supported by sufficient evidence. *See Martinez v.*  
18 *Heckler*, 807 F.2d 771 (9th Cir. 1986); *see also Bayliss v. Barnhart*, 427 F.3d 1211,  
19 1217 (9th Cir. 2005). Plaintiff has essentially re-stated the arguments raised in

1 connection with his step two and credibility challenges. Those arguments, which are  
2 rejected for the reasons outlined above, are likewise insufficient to justify disturbing  
3 the ALJ's step five determination. *See Hall v. Colvin*, No. CV-13-0043, 2014 U.S.  
4 Dist. LEXIS 45006, at \*24-25 (E.D. Wash. Mar. 31, 2014)(“A claimant fails to  
5 establish that a Step 5 determination is flawed by simply restating argument that the  
6 ALJ improperly discounted certain evidence, when the record demonstrates the  
7 evidence was properly rejected.”)(citing *Stubbs-Danielson v. Astrue*, 539 F.3d 1169,  
8 1175-76 (9<sup>th</sup> Cir. 2008).

#### 9 IV. CONCLUSION

10 After carefully reviewing the administrative record, this Court finds  
11 substantial evidence supports the Commissioner's decision, including the objective  
12 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly  
13 examined the record, afforded appropriate weight to the medical evidence, and  
14 afforded the subjective claims of symptoms and limitations an appropriate weight  
15 when rendering a decision that Plaintiff is not disabled. This Court finds no  
16 reversible error and because substantial evidence supports the Commissioner's  
17 decision, the Commissioner is GRANTED summary judgment and that Plaintiff's  
18 motion for judgment summary judgment is DENIED.

**V. ORDERS**

IT IS THEREFORE ORDERED that:

Plaintiff's motion for summary judgment, Docket No. 13, is DENIED.

The Commissioner's motion for summary judgment, Docket No. 14, is GRANTED.

The District Court Executive is directed to file this Order, provide copies to counsel, enter judgment in favor of the Commissioner, and close this case.

DATED this 18th day of May, 2015.

/s/Victor E. Bianchini  
VICTOR E. BIANCHINI  
UNITED STATES MAGISTRATE JUDGE